

ORDINANCE NO. 2010-10

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE
VILLAGE OF BISCAYNE PARK, FLORIDA, REPEALING
CHAPTER 16, DIVISION 2 ENTITLED "ELECTRICITY,
METERED AND BOTTLED GAS", SECTIONS 16-16 THROUGH
16-24 IN THEIR ENTIRETY; REPEALING CHAPTER 16,
DIVISION 3 ENTITLED "TELECOMMUNICATIONS",
SECTIONS 16-31 THROUGH 16-36 IN THEIR ENTIRETY;
DELETING THE REFERENCE TO DIVISION 1 OF CHAPTER 16
ENTITLED "GENERALLY"; CREATING NEW SECTIONS 16-12
THROUGH 16-19 RELATING TO MUNICIPAL PUBLIC SERVICE
TAX; PROVIDING FOR CONFLICT; PROVIDING FOR
SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING
FOR AN EFFECTIVE DATE**

WHEREAS, the Village Commission held two workshops in April, 2010 which explored additional sources of revenue available to the Village, including a municipal public service tax on the purchase of electricity, metered and natural gas, liquefied petroleum gas (either metered or bottled), manufactured gas (either metered or bottled), and water service, consistent with Section 166.231, et seq. of the Florida Statutes; and

WHEREAS, the current Village Code authorizes a levy to be imposed on the purchase of electricity, metered gas and bottled gas only with the current rate set at eight percent (8%); and

WHEREAS, pursuant to the recommendations of Mr. Ken Small of the Florida League of Cities, this ordinance adopts the public service tax ordinance approved by other cities and repeals the Village's current public service tax ordinance; and

WHEREAS, this new ordinance expands public service tax to include water service and increases the levy rate from eight percent (8%) to ten percent (10%); and

WHEREAS, the Village Commission finds it in the best interests of the Village and its citizens to repeal certain sections of Chapter 16 and to replace those sections with new sections relating to municipal public service tax; now, therefore

BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF
BISCAYNE PARK, FLORIDA, AS FOLLOWS:

Section 1. Chapter 16, Division 2 entitled "Electricity, Metered and Bottled Gas", Sections 16-16 through 16-24 of the Municipal Code of the Village of Biscayne Park are hereby repealed in their entirety.

Section 2. Chapter 16, Division 3 entitled "Telecommunications", Sections 16-31 through 16-36 of the Municipal Code of the Village of Biscayne Park are hereby repealed in their entirety.

Section 3. The reference to Chapter 16, Article 1 entitled "Generally" of the Municipal Code of the Village of Biscayne Park is hereby deleted.

Section 4. New Section 16-12 of Chapter 16 of the Municipal Code of the Village of Biscayne Park is hereby created to read as follows:

Sec. 16-12. Definitions Applicable to Sections 16-12 through 16-19.

(1) A "Seller" is a person, firm, corporation, or other legal entity who sells a service that is subject to a levy.

(2) The term "electronic transfer means the use of the Automated Clearing House (the "ACH"), or other electronic transfer system approved by the Village Manager or his/her designee on a case by case basis, by the Seller, to send the taxes collected directly from the Seller's bank to the Village's primary bank.

(3) "Fuel oil" shall include fuel oil grades Nos. 1, 2, 3, 4, 5, and 6, kerosene and coal oil.

(4) The terms "remit," "remittance" and "remitting", for the purposes of the tax imposed by this Chapter, mean the sending by the Seller and the receipt by the Village of all taxes levied and collected pursuant to Chapter 16. The date of receipt of such taxes by the Village will be the date of postmark, or if by electronic transfer, the date received by the Village's primary bank as indicated on the Village's bank statement.

(5) The term "return" means the supporting documentation submitted periodically in accordance with the provisions of this Chapter, and to be accompanied by the tax remittance, if any for that period, to the Village Manager or his/her designee, which at a minimum shall indicate:

(a) the name and address of the Seller; and

(b) the time period covered with respect to the particular return being filed; and

1 (c) the amount (in U.S. Dollars) of the revenue collected from the sale of the taxable
2 service; and

3
4 (d) the amount (in U.S. Dollars) of any collection allowance taken in accordance with
5 Florida law; and

6
7 (e) the amount (in U.S. Dollars) of tax being remitted to the Village, or having been
8 sent by electronic transfer to the Village's bank, which is the subject of the particular return being
9 filed; and

10
11 (f) the name and telephone number of a person authorized by the Seller to respond to
12 inquiries from the Village concerning how the Seller is administering and collecting the tax.

13
14 Those Sellers remitting the tax by electronic transfer must nevertheless send periodic returns to
15 the Village Manager or his/her designee.

16
17 (6) The term "tax" or "taxes" means the municipal public service tax authorized
18 pursuant to Section 166.231, Florida Statutes or Section 166.232, Florida Statutes, and this
19 Chapter.

20
21 (7) The term "levy" means and includes the imposition of the tax under Sections
22 166.231 and 166.232, Florida Statutes, all changes in the rate of the tax imposed under either of
23 those Sections, and all changes of election under Section 166.231(9)(a), Florida Statutes.

24
25 **Section 5.** New Section 16-13 of Chapter 16, of the Municipal Code of the Village of

26 Biscayne Park is hereby created to read as follows:

27 **Sec. 16-13. Purchase of Electricity, Gas, Fuel Oil, and Water Service – Levy of**
28 **Tax; Amount; Payment Generally of Tax.**

29
30 (1) Except as provided below or as otherwise exempted by Section 16-15, there is
31 hereby levied and imposed by the Village on each and every purchase of electricity, metered or
32 bottled gas (natural liquefied petroleum gas or manufactured gas), fuel oil, and water service,
33 within the corporate limits of the Village, a tax at the rate of ten percent (10%) of the total
34 amount charged for such utility service or commodity. For purposes of calculating the tax, the
35 amount charged for the taxable service shall be deemed to include any gross receipts taxes and
36 franchise fees separately stated on the customer's bill.

37
38 (2) The tax imposed by this section shall not be applied against any fuel adjustment
39 charge, and such charge shall be separately stated on each bill. "Fuel adjustment charge" shall
40 mean all increases in the cost of utility services to the ultimate consumer resulting from an
41 increase in the cost of fuel to the utility subsequent to October 1, 1973.

42
43 (3) Subject to the provisions of Section 16-16, such tax shall in every case be paid by
44 the purchaser for the use of the Village to the Seller of such electricity, metered or bottled gas,
45 fuel oil or water service at the time of paying the charge therefor.

1 **Section 6.** New Section 16-14 of Chapter 16 of the Municipal Code of the Village of

2 Biscayne Park is hereby created to read as follows:

3 **Sec. 16-14. Collection Generally and Disposition of Tax; Discontinuance of**
4 **Service Upon Failure of Purchaser to Pay Tax and Seller's Charge.**

5
6 (1) It shall be the duty of every Seller of electricity, metered or bottled gas (natural or
7 manufactured), fuel oil or water service to collect from the purchaser for the use of the Village
8 the tax levied by the preceding section, at the time of collecting the selling price charged for each
9 transaction and to file a return and remit on or before the twentieth (20th) day of each calendar
10 month, or if the twentieth day is either a legal holiday or is not a Village business day, then on or
11 before the first Village business day, that is not also a legal holiday, following the twentieth day
12 of the month, unto the Village Manager or his/her designee all such taxes levied and collected
13 during the preceding calendar month. It shall be unlawful for any Seller to collect the price of
14 any sale of electricity, metered or bottled gas (natural or manufactured), fuel oil or water service
15 without, at the same time, collecting the tax hereby levied in respect to such sales, unless such
16 Seller shall elect to assume and pay such tax without collecting the same from the purchaser.
17 Any Seller failing to collect such tax at the time of collecting the price of any sale where the
18 Seller has not elected to assume and pay such tax shall be liable to the Village for the amount of
19 such tax in like manner as if the same had actually been paid to the Seller, and the Village shall
20 cause to be brought all suit actions and to take all proceedings as may be necessary for the
21 recovery of such tax; provided, however, that the Seller shall not be liable for the payment of
22 such tax upon uncollected charges. If any purchaser shall fail, neglect or refuse to pay to the
23 Seller the Seller's charge and the tax hereby imposed and as hereby required on account of the
24 sale for which such charge is made, or either, the Seller shall have and is hereby vested with the
25 right, power and authority to immediately discontinue further service to such purchaser until the
26 tax and the Seller's bill shall have been paid in full.

27
28 (2) All Sellers may remit by hand-delivery, postal service or electronic transfer.
29 However, if a Seller elects to remit by electronic transfer, that Seller shall thereafter always remit
30 by electronic transfer.

31
32 (3) Notwithstanding any other provision of this section, in the event the total amount
33 of tax anticipated to be collected within a calendar quarter does not exceed one hundred twenty
34 dollars (\$120), the Seller of such service may, with the written authorization of the Village, remit
35 the taxes collected during such calendar quarter to the Village quarterly. In such case, the tax
36 shall be due on or before the twentieth day of the month following the end of the calendar quarter
37 in which the taxes were collected.

38
39 **Section 7.** New Section 16-15 of Chapter 16 of the Municipal Code of the Village of

40 Biscayne Park is hereby created to read as follows:

41 **Sec. 16-15. Exemptions and Exclusions from Payment of Tax.**

42
43 (1) Purchases by the United States Government, this State, and all counties, school
44 districts, and municipalities of the State, and by public bodies exempted by law or court order,
45 are exempted from the tax authorized by Section 16-13. However, governmental bodies which

1 sell or resell taxable service to non-exempt end users must collect and remit the tax levied under
2 Section 16-13.

3
4 (2) The following purchases of bottled gas and/or fuel oil are hereby excluded from
5 the tax levied by Section 16-13:

6
7 (a) Purchases of special fuels as defined in Section 206.86(1), Florida Statutes, to be
8 used in an internal combustion engine or motor to propel any form of vehicle.

9
10 (b) Purchases of fuel oil for use as an aircraft engine fuel or propellant.

11
12 (c) Fuel oil to be used as a raw material in a manufacturing process or to be used as a
13 cleaning agent or solvent when certified by the purchaser that such fuel oil shall be used only as
14 a raw material or cleaning agent or solvent. Such purchases and certification shall be reflected
15 monthly on forms prescribed by the Treasurer.

16
17 (3) Purchases by any recognized church in the Village for use exclusively for church
18 purposes are hereby exempt from the tax authorized by Section 16-13.

19
20 **Section 8.** New Section 16-16 of Chapter 16 of the Municipal Code of the Village of

21 Biscayne Park is hereby created to read as follows:

22 **Sec. 16-16. Computation of Tax When Seller Collects the Price Thereof in**
23 **Monthly Periods.**

24
25 In all cases where the seller of electricity, metered or bottled gas (natural or
26 manufactured), fuel oil or water service collects the price thereof in monthly periods, the tax
27 hereby levied may be computed on the aggregate amount of sales during such period; provided,
28 that the amount of tax to be collected shall be to the nearest whole cent to the amount computed,
29 and shall not exceed the rates set forth in Section 16-13 for any monthly period on each separate
30 service. Such service shall be classified as a separate service in case of metered electricity, gas
31 or water, whenever an individual meter is used for the measuring thereof.

32
33 **Section 9.** New Section 16-17 of Chapter 16 of the Municipal Code of the Village of

34 Biscayne Park is hereby created to read as follows:

35 **Sec. 16-17. Records to be Kept by Seller; General Administrative Audit Plan for**
36 **Enforcement of Ordinance; authority of Village to Audit Such**
37 **Records.**

38
39 (1) Each and every Seller of electricity, metered or bottled gas (natural or
40 manufactured), fuel oil, or water service shall keep at its principal place of business complete
41 records showing all sales in the Village of such commodities or service, which records shall
42 show the price charged upon such sale, the amount of taxes charged upon each sale, the date of
43 the sale, the date of payment thereof, the date such tax was remitted to the Village, the period of
44 time covered by such remittance and other related information that may be required to verify
45 proper collection and remittance of said taxes.

1
2 (2) To assure proper administration of the provisions of this Chapter, the Village
3 may, where possible and practical, conduct a periodic audit of such sales records of all
4 businesses in connection with which the tax is imposed under this Chapter. Failure to conduct
5 such an audit will not eliminate the liability of the Seller for collection and remittance of such
6 tax.
7

8 (3) Pursuant to Section 166.234, Florida Statutes, the Village may, during the Seller's
9 normal business hours at the official location of the Seller's books and records, audit the records
10 of any Seller of a service that is taxable by the Village under Section 166.231, Florida Statutes or
11 Section 166.232, Florida Statutes, for the purpose of ascertaining whether taxable services have
12 been provided or the correctness of any return that has been filed or payment that has been made,
13 if the Village's power to assess tax or grant a refund is not barred by the applicable limitations
14 period. Each such Seller must provide to the Village, upon sixty (60) days' written notice of
15 intent to audit from the Village, access to applicable records for such service, except an
16 extension of this sixty (60) day period must be granted if reasonably requested by the Seller. The
17 Seller may at its option waive the sixty (60) day notice requirement. If either the Village or the
18 Seller requires an additional extension, it must give notice to the other no less than thirty (30)
19 days before the existing extension expires, except in cases of bona fide emergency or waiver of
20 the notice requirement by the other party. In an audit, the Seller is liable only for its taxable
21 accounts collected which correspond to the information provided to it by the Village under
22 Section 166.233(3), Florida Statutes. As used in this section, "applicable records" means records
23 kept in the ordinary course of business which establish the collection and remittance of taxes
24 due. Such applicable records may be provided to the Village on an electronic medium if agreed
25 to by the Seller and the Village. In accordance with Section 166.231(9)(c), Florida Statutes, any
26 information received by the Village or its agent in connection with such audit is confidential and
27 exempt from the provisions of Section 119.07(1), Florida Statutes.
28

29 **Section 10.** New Section 16-18 of Chapter 16, Article II, of the Municipal Code of the

30 Village of Biscayne Park is hereby created to read as follows:

31 **Sec. 16-18. Interest and Penalties for Late Payments and Late Returns.**
32

33 Any Seller of electricity, metered or bottled gas (manufactured or natural), fuel oil or
34 water service failing to remit to the Village on or before the twentieth day of each calendar
35 month or quarter, as applicable, or if the twentieth day is either a legal holiday or is not a Village
36 business day, then on or before the first Village business day, that is not also a legal holiday,
37 following the twentieth day of the month or quarter, as applicable, all such taxes levied and
38 collected during the preceding tax period shall be liable for interest on the unpaid amount of tax
39 at the rate of one percent (1%) per month from the date the tax was due until paid. In addition,
40 penalties will be assessed at a rate of five percent (5% per month of the delinquent tax, not to
41 exceed a total penalty of twenty five percent (25%), except that in no event will the penalty for
42 failure to file a return be less than fifteen dollars (\$15.00). In the case of a fraudulent return or a
43 willful intent to evade payment of the tax, the Seller making such fraudulent return or willfully
44 attempting to evade payment of the tax, shall be liable for a specific penalty of one hundred
45 percent (100%) of the tax. Interest and penalties shall be computed on the net tax due after
46 application of any overpayments. The interest and penalties shall accrue from the due date until

1 the date such taxes are paid, provided however, that the Treasurer may settle or compromise any
2 interest due pursuant to this section as is reasonable under the circumstances.

3
4 **Section 11.** New Section 16-19 of Chapter 16 of the Municipal Code of the Village of
5 Biscayne Park is hereby created to read as follows:

6 **Sec. 16-19. Costs Incurred in Pursuit of Tax or Information as a Result of a**
7 **Violation of any of Sections 16-12 through 16-18.**
8

9 The Village is entitled to and may assess against Sellers not complying with any
10 provision of this Chapter, a fee being based upon the actual costs incurred by the Village in
11 collecting the tax or information due.
12

13 **Section 12. Repeal of Conflicting Provisions.** To the extent any provisions of the
14 Code conflict with this Chapter, those provisions are repealed in its entirety.

15 **Section 13. Severability.** The provisions of this Ordinance are declared to be
16 severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be
17 held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining
18 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it
19 being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any
20 part.

21 **Section 14. Inclusion in the Code.** It is the intention of the Village Commission, and
22 it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the
23 Code of the Village of Biscayne Park, Florida; that the sections of this Ordinance may be
24 renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be
25 changed to "Section" or other appropriate word.

26 **Section 15. Effective Date.** This Ordinance shall be effective upon adoption on
27 second reading.
28

1 The foregoing Ordinance was offered by Commissioner Childress, who moved its adoption. The
2 motion was seconded by Commissioner Anderson, and upon being put to a vote, the vote was as
3 follows:

4 **FIRST READING: June 8, 2010**


5 **SECOND READING: July 13, 2010**

6
7
8
9 **The foregoing ordinance upon being put
10 to a vote, the vote was as follows:**

11
12 
13 _____
14 Roxanna Ross, Mayor

Mayor Ross : Yes
Vice Mayor Childress: Yes
Commissioner Anderson: Yes
Commissioner Bernard: Absent
Commission Cooper: No

15
16
17 Attest:

18
19 
20 _____
21 Village Clerk

22
23 Approved as to form:

24
25 
26 _____
27 John J. Hearn, Village Attorney